

# Exhibit 17

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF WEST VIRGINIA  
HUNTINGTON DIVISION

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Jonathan R., minor, by Next :  
Friend, Sarah Dixon, et al., :  
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Plaintiffs, : Class Action  
:  
v. : 3:19-cv-00710  
:  
Jim Justice, in his official :  
capacity as the Governor of :  
West Virginia, et al., :  
:  
Defendants. :

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VIDEOCONFERENCE DEPOSITION OF JANET FLORY

DATE: October 23, 2020  
TIME: 9:01 a.m. to 2:59 p.m.  
LOCATION: Witness Location  
  
REPORTED BY: Felicia A. Newland, CSR

Veritext Legal Solutions  
1250 Eye Street, N.W., Suite 350  
Washington, D.C. 20005

<p style="text-align: right;">Page 66</p> <p>1 if there are concerns about the safety or the risk</p> <p>2 of harm to a child, you're leaving that child in</p> <p>3 that situation until you decide or until somehow</p> <p>4 these reports came to some conclusion.</p> <p>5 Q So when you say "for any reasonable</p> <p>6 professional standard not in good practice," is</p> <p>7 that based on your experience?</p> <p>8 A Absolutely.</p> <p>9 Q Is that based -- go ahead.</p> <p>10 A And it's also based on -- in every</p> <p>11 state, in every jurisdiction, there are specific</p> <p>12 regulations about the length of time that cases</p> <p>13 should take and different actions within an</p> <p>14 investigation of a case, how long they should take.</p> <p>15 Q And what are West Virginia's</p> <p>16 regulations on that?</p> <p>17 A I'm not recalling exactly, but I did</p> <p>18 have that -- it -- it's within -- it certainly is</p> <p>19 not seven or eight months apart, but it's within</p> <p>20 reasonable lengths of time. And there are</p> <p>21 different -- there are different time frames for</p> <p>22 different pieces of the report of an investigation.</p>	<p style="text-align: right;">Page 68</p> <p>1 incidents to try to reconstruct what had happened</p> <p>2 to a particular child. That's how I ended up</p> <p>3 making sense of it.</p> <p>4 Q Would it have been helpful for you to</p> <p>5 interview the caseworkers involved in these cases?</p> <p>6 A That would have been another dynamic</p> <p>7 or another element of what we were asked to do.</p> <p>8 Q Did you ask if you could speak with</p> <p>9 any caseworkers?</p> <p>10 A I'm sorry, am I frozen or are you</p> <p>11 frozen?</p> <p>12 Q I think you're frozen on my screen.</p> <p>13 MS. MAHONEY: Yes, you're frozen on</p> <p>14 my screen as well.</p> <p>15 THE WITNESS: Am I -- is it me? Can</p> <p>16 you hear me?</p> <p>17 MS. SMITH: I can hear you now.</p> <p>18 THE WITNESS: Okay.</p> <p>19 MS. MAHONEY: Can you repeat the</p> <p>20 question, please?</p> <p>21 BY MS. SMITH:</p> <p>22 Q I had asked if it would be helpful</p>
<p style="text-align: right;">Page 67</p> <p>1 Q So you didn't have any concerns with</p> <p>2 West Virginia's regulations in this area?</p> <p>3 A They seemed in line with other</p> <p>4 systems that I am aware of.</p> <p>5 Q So your concerns are whether or not</p> <p>6 those regulations were complied with?</p> <p>7 I'm sorry. You just froze, I'm not</p> <p>8 sure --</p> <p>9 A Yes. Yes, to that specific issue,</p> <p>10 timelines were not adhered to. But I think in this</p> <p>11 theme, we also talk about the state of the records</p> <p>12 themselves, it was very, very difficult to piece</p> <p>13 together the different elements of an investigation</p> <p>14 or conclusions of a report. It was impossible in</p> <p>15 most of these cases to follow along and to</p> <p>16 understand what the trajectory and what the time</p> <p>17 frames and what the compliance was.</p> <p>18 Q So despite that it was almost</p> <p>19 impossible to do so, you were still able to draw</p> <p>20 these conclusions from the case file?</p> <p>21 A Personally, I had stickies all over</p> <p>22 my bedroom wall with the dates of specific</p>	<p style="text-align: right;">Page 69</p> <p>1 for you to interview caseworkers to help you figure</p> <p>2 out what went on in this case. And I didn't hear,</p> <p>3 I think you had said -- just -- you cut out when</p> <p>4 you answered that question.</p> <p>5 A Okay. Interviewing caseworkers would</p> <p>6 have added another dynamic to this report that</p> <p>7 is -- that was beyond the scope of what we were</p> <p>8 asked to do. I -- I would say because I have --</p> <p>9 it's -- it was clear to me that if a caseworker</p> <p>10 were looking at these records, a new caseworker</p> <p>11 assigned to a case as I did, they would have great,</p> <p>12 great difficulty figuring out what the history was</p> <p>13 and what the trajectory of a family was within the</p> <p>14 system as well.</p> <p>15 Q And did you -- did you -- strike</p> <p>16 that.</p> <p>17 So are you aware of how West Virginia</p> <p>18 caseworkers review case records in their day-to-day</p> <p>19 work?</p> <p>20 A Specifically, no, I am not aware of</p> <p>21 how that happens. I can -- I could only see how</p> <p>22 the record was organized or not organized that I</p>

<p style="text-align: right;">Page 70</p> <p>1 reviewed.</p> <p>2 Q So you don't know how the records are</p> <p>3 organized for the West Virginia caseworkers?</p> <p>4 A No, I do not. I do know that at</p> <p>5 least in two of the cases, a great number of</p> <p>6 documents were dumped into the system that I</p> <p>7 reviewed at the end of last year. I don't know</p> <p>8 what the West Virginia SACWIS system looks like, I</p> <p>9 only know what I saw.</p> <p>10 Q So you don't know if the organization</p> <p>11 of the records as the West Virginia caseworker</p> <p>12 reviews it, you don't know if it's different than</p> <p>13 how you reviewed it?</p> <p>14 MS. MAHONEY: Objection. Asked and</p> <p>15 answered.</p> <p>16 THE WITNESS: Well, maybe this is not</p> <p>17 politic to say, but if what the caseworker sees is</p> <p>18 different and the organization of the record is</p> <p>19 different than what we saw, I would wonder why we</p> <p>20 saw it in the state that we saw it and whether that</p> <p>21 was perhaps deliberate or not.</p> <p>22</p>	<p style="text-align: right;">Page 72</p> <p>1 one report or one placement were not in one</p> <p>2 place.</p> <p>3 BY MS. SMITH:</p> <p>4 Q Are you aware that you were looking</p> <p>5 at screenshots from West Virginia's FACTS system?</p> <p>6 A Oh, yes.</p> <p>7 Q So you were not actually accessing</p> <p>8 the system as the case -- as the West Virginia</p> <p>9 caseworkers access them?</p> <p>10 MS. MAHONEY: Objection.</p> <p>11 THE WITNESS: I can't know that.</p> <p>12 Sorry.</p> <p>13 BY MS. SMITH:</p> <p>14 Q Did you access the system on</p> <p>15 plaintiffs' document review platform?</p> <p>16 A Yes.</p> <p>17 Q Okay. I'd like to turn to the next</p> <p>18 theme, which is also on page 8. It says, "The</p> <p>19 reviewed cases demonstrated a lack of information</p> <p>20 from key collateral sources that resulted in weak</p> <p>21 investigations" --</p> <p>22 MS. MAHONEY: Ms. Smith, you're</p>
<p style="text-align: right;">Page 71</p> <p>1 BY MS. SMITH:</p> <p>2 Q Well, have you worked with SACWIS</p> <p>3 systems in your prior roles?</p> <p>4 A I have.</p> <p>5 Q And how are case files organized in</p> <p>6 those systems?</p> <p>7 MS. MAHONEY: Objection. Relevance.</p> <p>8 THE WITNESS: It depends very much on</p> <p>9 the state and the -- and you may or may not know</p> <p>10 that SACWIS systems have evolved and devolved and</p> <p>11 revolved over the last 20 or 30 years, but most</p> <p>12 case systems, whether SACWIS or some combination of</p> <p>13 SACWIS and hard-copy case records, have some sense</p> <p>14 of organization to them: Here are the</p> <p>15 investigations, here are the placement, here's the</p> <p>16 placement history, here are the assessments that</p> <p>17 have been done.</p> <p>18 One can pull that out and look at</p> <p>19 it and see what has happened from -- from the</p> <p>20 time that the case came in until the current</p> <p>21 time. These records were totally disorganized.</p> <p>22 Even the -- even -- all the records related to</p>	<p style="text-align: right;">Page 73</p> <p>1 breaking up pretty bad.</p> <p>2 MS. SMITH: Is that better?</p> <p>3 MS. MAHONEY: It is.</p> <p>4 BY MS. SMITH:</p> <p>5 Q Okay. So what's the foundation for</p> <p>6 this theme?</p> <p>7 A The reviews that showed the lack of</p> <p>8 using key collateral sources. There were -- and we</p> <p>9 go through some of the examples here. In -- in</p> <p>10 Anastasia, which happened to be one of my cases,</p> <p>11 doctors and school personnel did -- and this was in</p> <p>12 the record, they pointed out the abuse, they</p> <p>13 pointed out patterns. There was no attempt or no</p> <p>14 recording of any work to try to reconcile what they</p> <p>15 were saying versus what the adoptive mother was</p> <p>16 saying.</p> <p>17 In another case, collaterals are</p> <p>18 listed on the screenshots. But that's all.</p> <p>19 There's no information about any interviews, about</p> <p>20 any way in which they were used to -- to really</p> <p>21 understand what was going on in the case situation.</p> <p>22 Q So I understand that it's -- that</p>

<p style="text-align: right;">Page 102</p> <p>1 pillars, of how this system is built and what the</p> <p>2 expectations are.</p> <p>3 BY MS. SMITH:</p> <p>4 Q And how would you see examples of</p> <p>5 this in a child's case record?</p> <p>6 A Repeated reports of some -- some form</p> <p>7 of neglect or abuse that appears on the face of it</p> <p>8 to stem from either the child's behavior or the</p> <p>9 parent's behavior and ability to parent that child</p> <p>10 that may -- based on knowledge about mental health,</p> <p>11 may relate back to mental illness. And then seeing</p> <p>12 no sort of assessment or recognition of that and</p> <p>13 closing the case with no further action about it</p> <p>14 until the next time that you see it.</p> <p>15 And in at least one instance, one</p> <p>16 case, the parent was accessing lots of mental</p> <p>17 health evaluation treatment, but it wasn't</p> <p>18 effective at all. And I think, in general, we did</p> <p>19 not see the spectrum, if you thought about the</p> <p>20 continuum of the kinds of interventions that can</p> <p>21 happen with children and with their parents in the</p> <p>22 mental health area, we did not see a range of</p>	<p style="text-align: right;">Page 104</p> <p>1 A Both, but more pre-placement.</p> <p>2 Q So this theme is actually in the</p> <p>3 permanency section, so do you -- what's your</p> <p>4 opinion about how DHHR failed to understand the</p> <p>5 debilitating effect of mental illness relating to</p> <p>6 post-placement services?</p> <p>7 A Well, not many of these kids are</p> <p>8 post-placement, frankly -- or I -- well,</p> <p>9 post-placement -- I'm sorry. Let me back up.</p> <p>10 This really gets into the question of</p> <p>11 the appropriateness of the placements and the kind</p> <p>12 of mental health services that were available or</p> <p>13 not available. And the overuse of psychiatric</p> <p>14 hospitalizations certainly is one piece of that,</p> <p>15 but this is also -- this particular statement, when</p> <p>16 a child is in placement as long as the goal is</p> <p>17 reunification of the family, there's a</p> <p>18 responsibility to provide the appropriate services</p> <p>19 to the family, the parents, so that the child can</p> <p>20 go back home. And I think that's more of the issue</p> <p>21 here.</p> <p>22 Q And what's your understanding of the</p>
<p style="text-align: right;">Page 103</p> <p>1 different options or resources available to -- to</p> <p>2 these cases.</p> <p>3 Q And how would you expect to see those</p> <p>4 options reflected in a case record?</p> <p>5 A From both the assessment that was</p> <p>6 going on about the family, about the nature of the</p> <p>7 report that came in and then the services, the</p> <p>8 range of services that was being provided to either</p> <p>9 the parents or the child, if whatever was</p> <p>10 appropriate.</p> <p>11 There was an overreliance on</p> <p>12 psychiatric hospitalization and long lengths of</p> <p>13 stay in psychiatric hospitals, which in many places</p> <p>14 these days, the attempt is to use that only as a</p> <p>15 diagnostic and a very short-term intervention. I</p> <p>16 didn't see any day-treatment efforts or programs.</p> <p>17 I mean, this -- this deals with</p> <p>18 perhaps the question that you raised earlier about</p> <p>19 what is available in West Virginia in terms of the</p> <p>20 system.</p> <p>21 Q And are you talking about</p> <p>22 pre-placement services?</p>	<p style="text-align: right;">Page 105</p> <p>1 availability of those services in West Virginia?</p> <p>2 A My understanding is only to the</p> <p>3 extent that I reviewed case records and could see</p> <p>4 what happened and what didn't happen with the kids</p> <p>5 that we reviewed.</p> <p>6 Q And so you're talking about what</p> <p>7 happened or didn't happen in your review of the</p> <p>8 three case records?</p> <p>9 MS. MAHONEY: Objection. Asked and</p> <p>10 answered.</p> <p>11 THE WITNESS: Yeah, I'm specifically</p> <p>12 talking about that, but this was a -- an</p> <p>13 observation that all three of us saw in all -- in</p> <p>14 the nine cases that we reviewed.</p> <p>15 BY MS. SMITH:</p> <p>16 Q Okay. And do you -- is it your -- do</p> <p>17 you think that the case record can show a failure</p> <p>18 to understand? Is that right?</p> <p>19 MS. MAHONEY: Objection.</p> <p>20 BY MS. SMITH:</p> <p>21 Q The failure to understand a</p> <p>22 debilitating effect of mental illness?</p>

<p style="text-align: right;">Page 122</p> <p>1 BY MS. SMITH:</p> <p>2 Q So on page 18 it says, "DHHR failed</p> <p>3 to utilize least restrictive family-like placement</p> <p>4 for children." Is that something that's required</p> <p>5 in DHHR policy?</p> <p>6 A Yes.</p> <p>7 Q And did you conclude that DHHR failed</p> <p>8 to use the least restrictive family-like placements</p> <p>9 for the three case files that you reviewed?</p> <p>10 A In two instances, absolutely, yes.</p> <p>11 In one instance there were -- in the middle of</p> <p>12 Dennis' ten placements, did have placements with</p> <p>13 his grandparents, but it was both long after he had</p> <p>14 been removed and then they were not -- they did not</p> <p>15 end up being the permanent placement for him.</p> <p>16 Q So is it -- is it your opinion that</p> <p>17 the caseworkers violated DHHR policy with respect</p> <p>18 to the least restrictive placement for those three</p> <p>19 case files that you reviewed?</p> <p>20 A Yes.</p> <p>21 Q And what does -- how do -- what does</p> <p>22 least restrictive mean?</p>	<p style="text-align: right;">Page 124</p> <p>1 the length of stay.</p> <p>2 Q And do you know what percentage of</p> <p>3 foster children in West Virginia are in kinship</p> <p>4 placement?</p> <p>5 A I do not.</p> <p>6 Q Do you know what percentage of foster</p> <p>7 children in West Virginia are in foster family</p> <p>8 settings?</p> <p>9 A I do not.</p> <p>10 Q Are you aware that the West Virginia</p> <p>11 Circuit Court has to make a -- has to order</p> <p>12 child -- children to residential placements in the</p> <p>13 least restrictive finding?</p> <p>14 MS. MAHONEY: Objection.</p> <p>15 THE WITNESS: Yes, in general, I am</p> <p>16 aware of that.</p> <p>17 BY MS. SMITH:</p> <p>18 Q So you disagree with those court</p> <p>19 orders?</p> <p>20 MS. MAHONEY: Objection.</p> <p>21 Mischaracterizes testimony.</p> <p>22 THE WITNESS: Well, court orders are</p>
<p style="text-align: right;">Page 123</p> <p>1 A Least restrictive means just what it</p> <p>2 says in the federal law. When a child is removed</p> <p>3 from his or her own family, the system has an</p> <p>4 obligation to find the most family-like least</p> <p>5 restrictive setting possible. And if you look at</p> <p>6 the continuum of placements, kinship would be the</p> <p>7 most family-like because presumably the children</p> <p>8 know the kin that they're living with.</p> <p>9 A regular foster home would be a</p> <p>10 little bit more restrictive but still a family-like</p> <p>11 setting. Therapeutic foster homes. And then you</p> <p>12 go on up until you reach the far end of the</p> <p>13 spectrum, which would be residential placement in</p> <p>14 psychiatric hospitalization.</p> <p>15 Q And can residential placements in a</p> <p>16 psychiatric hospital ever be a least restrictive</p> <p>17 placement?</p> <p>18 A Ever be what? I'm sorry.</p> <p>19 Q Ever be a least restrictive placement</p> <p>20 for a child?</p> <p>21 A In some limited instances for limited</p> <p>22 periods of time. It's not just the setting, it's</p>	<p style="text-align: right;">Page 125</p> <p>1 generally the result of a department's assessment</p> <p>2 and recommendation to the court. It is the</p> <p>3 department's responsibility to do that work, not</p> <p>4 the court's.</p> <p>5 BY MS. SMITH:</p> <p>6 Q But the court doesn't have to go</p> <p>7 along with the recommendation?</p> <p>8 MS. MAHONEY: Objection.</p> <p>9 THE WITNESS: I'm sorry. Yes, of</p> <p>10 course, they can override.</p> <p>11 BY MS. SMITH:</p> <p>12 Q Let's go to the next theme on page</p> <p>13 21. It says, "DHHR failed to adequately address</p> <p>14 child specific placement needs."</p> <p>15 So does this -- what reasonable</p> <p>16 professional standard does this theme relate to?</p> <p>17 MS. MAHONEY: Objection. Asked and</p> <p>18 answered.</p> <p>19 THE WITNESS: There are several</p> <p>20 standards that this relates to. One is that a plan</p> <p>21 should always be specific to a child in his or her</p> <p>22 own specific needs as much as possible. A second</p>